Supreme Court, U. S.
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in the Supreme Court of the United States

NO. 75-150

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

ALFREDO FLORES, a/k/a ALI,
Defendant-Appellant.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

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I

Notice is hereby given that ALFREDO FLORES, Defendant-Appellant, hereby Petitions the SUPREME COURT OF THE UNITED STATES for a WRIT OF CERTIORARI on a Final Order of the UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT, in the Case of UNITED STATES OF AMERICA vs. ANTONIO QUESADA, ALFREDO FLORES, a/k/a ALI, MARITZA

BREZOT; Case Number 74-2881, Affirming the Judgment of Conviction; said Decision having been entered May 7, 1975. Copy of said Opinion is hereto attached in the Appendix as Exhibit "A".

This PETITION FOR WRIT OF CERTIORARI is made pursuant to 28 USC 1254 (1).

II

The Questions presented for review are as follows:

1. Did the Court acquire jurisdiction of Defendant-Appellant, ALFREDO FLORES, unlawfully through the conduct of United States Drug Agents, who kidnapped him in Venezuela and abducted him to the United States for the purpose of prosecuting him here; making the entire proceedings in the United States District Court void?

2. Was Defendant-Appellant, ALFREDO FLORES, substantially prejudiced and deprived of a fair trial by reason of the Prosecutor conversing with, coaching, and preparing an essential Prosecution witness during his appearance on the Witness Stand, while Cross-Examination was proceeding; following which the Witness testified falsely and the Prosecutor failed and deliberately chose not to bring the knowing false testimony of a material nature to the attention of the Jury?

III

The Constitutional Provisions, Treaties, and Statutes which are involved in this Case are listed below and are more fully set forth in the Appendix as Exhibit "B":

UNITED STATES CONSTITUTION

Fourth and Fifth Amendments

UNITED NATIONS CHARTER

Article 2, Paragraph 4

ORGANIZATION OF AMERICAN STATES CHARTER

Article 17

Article 20

IV

STATEMENT OF THE CASE

On October 18, 1973, FLORES, together with Defendants, BREZOT and QUESADA, were indicted at Miami, Florida for violation of Title 21, U. S. Code, Section 173 and 174, charging a conspiracy with intent to receive, buy, and sell narcotics during 1968 and 1969. Pursuant to the Indictment, FLORES, a citizen of Venezuela, was arrested on May 16, 1974 in Venezuela and was immediately transported by a U. S. Drug Agent to Puerto Rico for a Removal Hearing which was held on May 28, 1974 before a United States Magistrate. At said Hearing, FLORES was ordered removed to Miami, Florida. On May 29, 1975, FLORES was arraigned at Miami and entered a Plea of Not Guilty. Trial date was set for and commenced on July 1, 1974 and continued until July 3, 1974, at which time the Jury found all Defendants Guilty as charged, on July 3, 1974, FLORES was sentenced to fifteen (15) years imprisonment.

On July 8, 1974, FLORES filed a Motion for New Trial, which was denied by the Trial Court on July 12, 1974.

Notice of Appeal was filed by FLORES on July 10, 1974, following which, on July 23, 1974, FLORES was delivered to the U. S. Penitentiary in Atlanta, Georgia, where he is now confined.

Argument was had before the United States Court of Appeals for the Fifth Circuit and a Decision was rendered on May 7, 1975 Affirming the Conviction and Sentence of the United States District Court for the Southern District of Florida.

STATEMENT OF THE FACTS

U. S. Drug Agents, working with the U. S. Attorney in Miami, Florida, were looking around South America for Alfredo Flores to get him into the United States, legally or otherwise.

According to the testimony by Government witnesses at the Removal Hearing of May 28, 1974 at San Juan, Puerto Rico, the U. S. Drug Enforcement Administration Agent in charge of this case, Agent Knight, talked to "cooperating individuals" about Alfredo Flores "at least 30" times during and after the Federal Grand Jury investigation (REMOVAL TR 20 & 23). The same Agent also testified that the U. S. Attorney handling the case in Miami wanted Flores "brought to the United States" as soon as the Removal Hearing was over (REMOVAL TR 25).

The second U. S. D. E. A. Agent to testify in Puerto Rico, Agent Jorge, stated that Flores was met by this Agent at the San Juan Airport on a Pan Am plane arriving from Venezuela, "together with two gentlemen", one of whom was a "fellow worker from the Federal Bureau of Narcotics" named Guzman and the Agent for the Government of Venezuela named Gonzalez (REMOVAL TR 30-31). Agent Jorge further admitted that he was at the Airport "following the instructions of my supervisor", and that he had a Warrant of Arrest for Flores, and he was told what flight to look for and that Agents Guzman and Gonzalez would also arrive on that flight. In fact, he testified that the two agents were physically next to Flores and that their purpose of being on that flight was to accompany Flores "here until I arrested him", (REMOVAL TR 32 & 40).

Agent Jorge also revealed that he was the one who took Flores' passport from him and "gave it directly to the immigration officer", (REMOVAL TR 34 & 38).

Further, Agent Jorge admitted that the two accompanying agents "came with Mr. Flores from Venezuela" (REMOVAL TR 42); and that these agents pointed out Flores to him when he went onto the plane to make the arrest (REMOVAL TR 48); and, that Agent Jorge "knew they were coming with Mr. Flores and I was going to arrest that Mr. Flores,' ('REMOVAL TR 43).

Finally, and most importantly, Agent Jorge testified that he knew Flores was accompanied by the two agents on the Pan Am plane from Venezuela to Puerto Rico not of his own free will "because Mr. Flores demonstrated that he was not in Puerto Rico because of his will, he did not

want to be here, he was not happy to be here in Puerto Rico", (REMOVAL TR 43); on the contrary, (REMOVAL TR 47) shows that Flores had in his possession at the time of his arrest an ALM Antillean Airlines ticket registered on May 13, 1974 reflecting a round-trip flight from Curacao to Venezuela and from Venezuela back to Curacao.

The foregoing Government testimony has been corroborated and enlarged by the four-page Affidavit and Offer to Prove of Flores, which has been made a part of this Record on Appeal in order to fully apprise this Court of the factual basis of the events leading up to the Removal Hearing of May 28, 1974. Essentially, Mr. Flores swears that while waiting to board an ALM plane in Venezuela for return to Curacao, he was detained by Venezuelan Policemen for over a day and then was forcibly placed aboard a Pan Am World Airway plane by a U. S. Drug Agent and a Venezuelan Policeman who then accompanied him to Puerto Rico while he was handcuffed; thereafter, he was arrested in Puerto Rico by Agent Jorge and was searched and deprived of all documents and personal belongings following which he was incarcerated until the Removal Hearing of May 28, 1974.

At said Removal Hearing, Flores petitioned and moved the Court to Quash all proceedings "because of unlawful conduct by Government officers . . . " and because, "this Removal Hearing is against all of the due processes of law doctrines". (REMOVAL TR 3-4). The U. S. Magistrate thereupon denied the Motion to Quash and commenced the Removal Hearing, the Magistrate observing that, "the method in which the Defendant was arrested is irrelevant at this time in these proceedings . . ." (REMOVAL TR 11).

Trial on the Indictment commenced in Miami, Florida on July 1, 1974 and two witnesses testified for the Government, to-wit: Carlos Inchaustegui and Felix Olivera. Following the direct testimony of Olivera, he was cross-examined by counsel for Defendant, Brezot, after which there was a short recess before commencement of further examination by counsel for Defendant Flores. During the recess, counsel for Flores observed and partially overheard Witness Olivera and the Prosecutor discussing the facts regarding the case. (TR 180). Flores' counsel then moved to strike the testimony of Olivera (TR 181), in response to which the Prosecutor, Miss Atkinson, did admit talking to the witness during the recess and advised him about "the trap that Mr. Garber laid for him," that he should answer certain questions in a certain way, that she would "ask him other questions on re-direct at a later time". Also, she did not see anything wrong in saying that to him at that time. (TR 181-182).

The Trial Court thereupon commented that it was improper (TR 182), and he warned, "you cannot talk to witnesses who are on the Stand and giving them instructions. You cannot coach him, . . . " even about the trap (TR 183). However, the Trial Court did not construe this error as "being serious enough for warranting a mistrial and striking of the testimony and starting the case over again. The Fifth Circuit may look at it in a different light. We may be trying the case over again but there is no apology necessary . . . ." (TR 184).

Following this exchange, counsel for Flores did cross-examine Government witness Olivera. At TR 198, Olivera admitted talking to the Prosecutor during the recess, but at TR 199, he could not remember the Prosecutor telling

him that the Defense attorneys might be attempting to trap him. In fact, on the next page, TR 200, Olivera answered, "It's important, but I don't remember her using the word "trap". When asked how did she put it, he then responded, "she did not put it to me in any way". Then, Olivera denied that Miss Atkinson told him to be careful of certain things he was saying and that the entire conversation between those two during the recess had been about previous statements he had given to the authorities and that she had told him, "Don't be nervous, you are doing good". (TR 200). The prosecutor did not correct this perjury.

Thereafter, on redirect of Olivera by Miss Atkinson, at TR 209, she commenced to ask the witness the questions that she had told him during the recess she would ask on redirect and Olivera answered those questions as she had instructed him to do. (TR 209-210).

Following this testimony, defense counsel moved to strike the testimony in its entirety of the witness Olivera on the grounds of the differences of the Testimony of the Witness Olivera and the representation by the Prosecutor concerning the conversation between the two during the recess (TR 211, 214-216). The Motion was denied. (TR 216).

It was during the Argument of the preceding Motion to Strike that the Trial Court instructed other potential witnesses as to whom they could or could not talk to during the Trial. The Trial Court advised that they could talk to the lawyers, but "They may not talk to you while you are on the witness stand during a recess, ..." (TR 212).

V

THE QUESTIONS PRESENTED FOR REVIEW ARE SUBSTANTIAL FEDERAL QUESTIONS

Petitioner is of the firm conviction and belief that the questions presented for review in this proceeding involve substantial Federal issues regarding the United States Government and its standing in the international community as well as important issues of due process of law.

More specifically, it has been seen that in order to obtain jurisdiction over the person of ALFREDO FLORES the United States Government, acting through Federal Drug Agents and various "questionable" foreign agents, participated in an outright kidnapping of a foreign national for the purposes of bringing that foreign national to Trial within the territorial limits of the United States. Petitioner would respectfully submit that such actions are so abhorrent to the American Judicial System as to demand a decision by this Court as to the validity of the actions of the United States Government in this case.

More importantly, it appears on the face of the agreed upon facts that the United States violated the territorial rights of a foreign country, to-wit:

Venezuela in the capture and kidnapping of ALFREDO FLORES which, of course, would be in direct controvention of international law, the Organization of American States Charter and the United Nations Charter. Clearly there are judicial procedures for extradition of individuals accused of crimes in the United States. None of these were followed, or, even attempted in this instance.

The Fifth Circuit Court of Appeals in Affirming the Conviction and Sentence in effect condoned illegal kidnappings and abductions of foreign nationals without due process of law. Such a decision must be repugnant to the United States Constitution and the American Legal System.

It is important to note that never before has this Court been presented with the issue involving the kidnapping of a foreign national from his own country to the United States in order to permit him to be tried in the United States. This obviously makes this case one of first impression before this Court and therefore there is definitely a greater urgency in this Court accepting jurisdiction and determining this Point of Law.

Would the United States Government tolerate the kidnapping of an American Citizen who had committed a crime in a foreign country and sanction such a kidnapping by a foreign agent simply for the purpose of bringing an American citizen to Trial in that foreign country? Clearly I think the answer would be "no"; therefore, why should this Court condone such actions by United States Government Agents? Clearly this question is of such great magnitude and import as to constitute a mandate that this Court accept Certiorari and pass directly on this point.

Petitioner's second contention is that he was denied due process of law in the Trial Court when during a recess the United States Attorney openly discussed a witness' testimony while that witness was on the witness stand and in the middle of Defense Counsel's Cross-Examination. As the facts indicate, the United States Attorney was less than candid with the Court regarding her out of Court recess

discussion wit' the witness. The Witness, when questioned about the out of Court recess discussion, testified that he simply did not remember what the United States Attorney had said to him.

This question appears not to have been previously decided by any Federal Court directly. It is Petitioner's contention that this issue also presents a substantial Federal question regarding due process of law in that this case presents a blatant example of witness coaching, which is so incongruous with the due process clause and, therefore, it requires this Court to accept jurisdiction and to decide this issue on the merits and the law so as to provide the Courts of this Country with a definitive statement of the law regarding such behavior by attorneys and witnesses.

CONCLUSION

The conclusion of the Petitioner is that the facts involved in this case are of such a substantial federal nature as to require this Court to accept jurisdiction of all the issues involved and to decide once and for all the questions presented.

Respectfully submitted,

ELLIS RUBIN LAW OFFICES

By: _____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the required number of copies of this Petition for Writ of Certiorari was mailed this ____ day of July, 1975 to the Clerk of the Supreme Court, Washington, D.C. and copies were also furnished to KAREN ATKINSON, Assistant U.S. Attorney.

_____
ELLIS S. RUBIN